

KUMPULAN WANG AMANAH PENCEN

A

v.

HMJ SHAHAROM & KS WEE

COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA

B

RAMLY ALI JCA

ZAHARAH IBRAHIM JCA

[CIVIL APPEAL NO: W-02(IM)-211-2009]

5 JUNE 2012

C

CIVIL PROCEDURE: *Summary judgment - Appeal - Dispute as to legal fees charged by solicitors to client - Whether triable issues raised - Whether appeal ought to be allowed - Rules of the High Court 1980, O. 14*

D

LEGAL PROFESSION: *Bill of costs - Legal fees - Fees based on percentage of value of subject matter of transaction and "international norm" - Whether provided for under Sixth Schedule of the Solicitors' Remuneration Order 2005*

E

LEGAL PROFESSION: *Bill of costs - Non-contentious matter - Failure by solicitors to provide detailed bill of costs - Whether detailed bill of costs need not be furnished for non-contentious matter - Whether s. 121(1) Legal Profession Act 1976 applicable to non-contentious matters - Whether bill for gross sum of no effect - Legal Profession Act 1976, s. 113(6)*

F

This was an appeal against the decision of the High Court allowing the respondent/plaintiff's application under O. 14 of the Rules of the High Court 1980 for summary judgment against the appellant/defendant. The dispute in this case was pertaining to the legal fees charged by the plaintiff in respect of a draft agreement which the defendant had engaged the plaintiff to vet. The defendant disputed the legal fees charged by the plaintiff on the grounds that the fees were excessive and that the Sixth Schedule of the Solicitors' Remuneration Order 2005 does not provide for the charging of fees on a "percentage" basis or in accordance with the so-called "international norms". The defendant requested for a detailed bill of costs for the purposes of taxation after being furnished with the bill of costs for gross sum. However, the request was not acceded to by the plaintiff on the grounds that a detailed bill of costs need not be issued as the fees were for non-contentious matter. The defendant submitted that notwithstanding

G

H

I

- A that the fees were for a non-contentious matter, the plaintiff was still required to deliver a detailed bill of costs if the defendant requested for the same relying on ss. 121 and 113(6) of the Legal Profession Act 1976 ('LPA').
- B **Held (allowing the appeal with costs)**
Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:
- C (1) The words "subject to s. 121" in s. 113(6) LPA are significant in that by reason of the words, s. 121(1) of the LPA is also applicable to non-contentious matters. (para 14)
- D (2) The defendant had requested for a detailed bill within the prescribed time frame. In the light of s. 113(6) read with proviso (a) to s. 121(1) of the LPA, whether or not the plaintiff was legally obliged to furnish the defendant with "a bill containing detailed items" for the purpose of taxation, and that the gross sum bill was, therefore "of no effect" was a triable issue. (para 15)
- E (3) The plaintiff had based their fees on a percentage of the value of the subject-matter of the transaction and also on the so-called "international norms". However, the Sixth Schedule of the Solicitors' Remuneration Order does not provide for the charging of fees on a percentage basis, and neither does the
- F said Schedule make any reference to any "international norms". Therefore, whether or not the plaintiff's bill was in compliance with the Sixth Schedule of the Solicitors' Remuneration Order, or (as a consequence) whether or not the bill was a *bona fide* bill for the purpose of s. 124(2) of the
- G LPA were triable issues. (paras 24 & 25)

Bahasa Malaysia Translation Of Headnotes

- Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang membenarkan permohonan responden/plaintif di bawah A. 14 Kaedah-Kaedah Mahkamah Tinggi 1980 bagi penghakiman terus terhadap perayu/defendan. Pertikaian di dalam kes ini adalah berkaitan dengan fi guaman yang dikenakan oleh plaintiff berhubung dengan deraf perjanjian yang mana defendan telah melantik plaintiff untuk menyemak. Defendan mempertikaikan fi guaman yang
- H dikenakan oleh plaintiff atas alasan bahawa fi tersebut adalah berlebihan dan bahawa Jadual Keenam Perintah Saraan Peguamcara 2005 tidak memperuntukkan pengenaan fi atas dasar
- I

“peratusan” atau menurut “international norms” seperti yang didakwa. Defendan telah meminta bil kos terperinci bagi tujuan pentaksiran selepas diserahkan dengan bil kos bagi jumlah kasar. Walau bagaimanapun, permintaan tersebut tidak dipenuhi oleh plaintif atas alasan bahawa bil kos terperinci tidak perlu dikeluarkan kerana fi tersebut adalah berkaitan dengan perkara yang tidak menimbulkan perbalahan. Defendan berhujah bahawa walaupun fi tersebut bukan bagi perkara yang tidak menimbulkan perbalahan, plaintif masih perlu menyerahkan bil kos terperinci jika defendan memintanya dengan menyandar atas ss. 121 dan 113(6) Akta Profesion Undang-Undang 1976 (‘Akta’).

Diputuskan (membenarkan rayuan dengan kos)
Oleh Hishamudin Mohd Yunus HMR menyampaikan penghakiman mahkamah:

- (1) Perkataan “subject to section 121” di dalam s. 113(6) Akta adalah penting di mana, disebabkan oleh perkataan tersebut, s. 121(1) Akta juga terpakai kepada perkara-perkara yang tidak menimbulkan perbalahan.
- (2) Defendan telah meminta bil terperinci dalam tempoh masa yang ditetapkan. Berikutan s. 113(6) dibaca bersama proviso (a) kepada s. 112(1) Akta, perkara berkaitan dengan sama ada plaintif bertanggungjawab dari segi undang-undang untuk memberikan kepada defendan bil yang mengandungi butir-butir yang terperinci bagi tujuan pentaksiran, dan bahawa bil dengan jumlah kasar adalah tidak mempunyai kesan merupakan isu yang perlu dibicarakan.
- (3) Plaintif mendasarkan fi kepada peratusan nilai subjek perkara transaksi dan juga terhadap “international norms” seperti yang didakwa. Walau bagaimanapun, Jadual Keenam Perintah Saraan Peguamcara tidak memperuntukkan pengenaan fi atas dasar peratusan, dan Jadual tersebut juga tidak merujuk kepada mana-mana “international norms”. Oleh yang demikian, sama ada bil plaintif mematuhi Jadual Keenam Perintah Saraan Peguamcara, atau (sebagai akibatnya) sama ada bil tersebut adalah bil *bona fide* bagi kehendak s. 124(2) Akta adalah isu-isu yang perlu dibicarakan.

A Case(s) referred to:

Tetuan Jaffar & Menon v. Senandung Kualiti Sdn Bhd & Anor [2005]
1 CLJ 234 HC (foll)

Legislation referred to:

Legal Profession Act 1976, ss. 113(6), 121(1), 124(2)

B Rules of the High Court 1980, O. 14

For the appellant - Porres Royan; M/s Shook Lin & Bok

For the respondent - M Menon (YS Cheah with him); M/s Jaffar & Menon

C *[Appeal from High Court, Kuala Lumpur; Civil Suit No: S5-21-203-2006]*

Reported by S Barathi

JUDGMENT

D Hishamudin Mohd Yunus JCA:

E [1] This is an appeal against the decision of the High Court of Kuala Lumpur in allowing the respondent's/plaintiff's O. 14 application for summary judgment against the appellant/defendant.

[2] On 27 October 2011 we unanimously allowed the appellant's/defendant's appeal with costs.

[3] We now give our grounds.

F [4] In this judgment, for convenience, we will be referring to the appellant as the 'defendant', and to the respondent as the 'plaintiff'.

G [5] The dispute between the parties pertains to legal fees of RM1,346,625 (RM1,282,500 + RM64,125) charged by the plaintiff in respect of a draft agreement which the defendant had engaged the plaintiff to vet.

H [6] The defendant disputes the legal fees that the plaintiff had charged them on the grounds that the fees are excessive; and, moreover, the Sixth Schedule of the Solicitors' Remuneration Order 2005 does not provide for the charging of fees on a 'percentage' basis or in accordance with so-called 'international norms'.

I

[7] The defendant had required the plaintiff to furnish them with a detailed bill of costs so that the bill could be taxed. A

[8] It is not disputed that the plaintiff's bill of costs was for a gross sum and for a non-contentious matter.

[9] The plaintiff's writ and statement of claim (claiming the sum of RM1,346,625) was filed on 22 August 2006, and was served on the defendant on 22 September 2007. B

[10] Before the plaintiff filed the writ action against the defendant, and before the expiration of three months from the date of delivery to the defendant of the plaintiff's bill (the bill was received by the defendant on 28 June 2006), the defendant, by their solicitors' letter of 12 September 2006, informed the plaintiff that it disagreed with the plaintiff's bill of costs of 27 June 2006. The defendant also informed the plaintiff of their intention to have the same taxed; and they, therefore, required the plaintiff to deliver to them a detailed bill of costs. C D

[11] The plaintiff, however, did not accede to the defendant's request. The plaintiff takes the position that a detailed bill of costs need not be issued to the defendant; the reason being, as contended by the plaintiff, that the fees are for a non-contentious matter. E

[12] The defendant, on the other hand, submits that notwithstanding that the fees were for a non-contentious matter, the plaintiff, nevertheless, was still required to deliver a detailed bill of costs if the defendant were to request for the same. The defendant relies on s. 121(1) of the Legal Profession Act 1976 ('LPA') and s. 113(6) of the LPA. Section 121(1) states: F G

121. Where remuneration of advocate and solicitor not subject of agreement

- (1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum: H

Provided that:

- (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three I

A months from the date of delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;

B [13] Section 113(6) provides:

(6) So long as an order made under this section is in operation, taxation of bills of costs of advocates and solicitors in respect of noncontentious business shall, subject to section 121, be regulated by that order.

C

[14] The words ‘... subject to s. 121, ...’ are significant. In our judgment, by reason of these words in s. 113(6) of the LPA, s. 121(1) of the LPA is also applicable to non-contentious matters. This was so ruled in *Tetuan Jaffar & Menon v. Senandung Kualiti Sdn Bhd & Anor* [2005] 1 CLJ 234, where James Foong J (as he then was) held:

D

Having considered these propositions, I am of the view that the phrase “subject to s. 121” in s. 113(6) LPA permits the 1st defendant to apply for taxation of the bill of cost under s. 121(1)(b) LPA on non-contentious business ascribed under s. 113 LPA. Though s. 121 LPA governs taxation of a bill of cost concerning matters that are contentious and s. 113 LPA relates to non contentious business but with the inclusion of the phase “subject to” in s. 113(6) LPA it means that taxation of non-contentious business ascribed by the order of the Solicitors Costs Committee under s. 113 LPA must be subjected to another provision or procedural limitation for implementation. And the selected provision to facilitate this is s. 121 LPA. This means that for remedy to recover remuneration ascribed by the Solicitors Cost Committee is conditional upon the application of s. 121 LPA.

E

F

G

[15] We are of the view that on the facts of the present case, particularly, the fact that there was a request for a detailed bill by the defendant within the prescribed time frame, and in the light of s. 113(6) read with proviso (a) of sub-s. (1) of s. 121 of the LPA, it is a triable issue as to whether or not the plaintiff was legally obliged to furnish the defendant with ‘a bill containing detailed items’ for the purpose of taxation; and that the gross sum bill is, therefore, now ‘of no effect’ (see proviso (a)).

H

I

[16] But there is yet another issue. It is common ground that in the present case the Sixth Schedule of the Solicitors' Remuneration Order 2005 applies to the remuneration payable to the plaintiff. Paragraph 2(f) of the order provides:

Remuneration

2. The remuneration of a solicitor in respect of non-contentious business shall be:

(a) ...

...

(f) in respect on non-contentious business work for which there are no provision made to regulate the remuneration of a solicitor by means of a scale or fixed fee, the remuneration of the solicitor shall be in accordance with rule 1 of the Sixth Schedule ...

[17] Rule 1 of the Sixth Schedule provides:

1. The remuneration of a solicitor in respect of non-contentious work for which no provision is made by means of a scale or fixed fee shall be such sum as is fair and reasonable having regard to all the circumstances of the case, and in particular the following circumstances:

(a) the importance of the matter to the client;

(b) the skill, labour, specialized knowledge and responsibility involved on the part of the solicitor;

(c) the complexity of the matter or the difficulty or novelty of the question raised;

(d) where money or property is involved, the amount or value thereof;

(e) the time expended by the solicitor;

(f) the number and importance of the documents prepared and perused by the solicitor;

(g) the place and the circumstances under which the services or business or any part thereof are rendered or transacted.

[18] In our judgment, it is also a triable issue as to whether or not the bill issued by the plaintiff was in compliance with the Sixth Schedule of the Solicitors' Remuneration Order.

A [19] We so hold for the following reason.

[20] It is to be recalled that the plaintiff's bill of costs was a gross sum bill and not a detailed bill of costs. It was for a total sum of RM1,346,625, made up of RM1,282,500 as fees and RM64,125 as the 5% Government tax.

B

[21] How did the plaintiff arrive at this sum of RM1,282,500?

[22] In their letter of 22 September 2005 to the defendant, the plaintiff informed the defendant that the legal fees (which were inclusive of consultancy research professional fees) that they were charging were 1.5% of the value of the subject-matter of the transaction (USD\$30 million, which is equivalent to RM114 million).

C

D [23] The defendant then by their letter of 2 December 2005 requested the plaintiff to review the fees (of RM1,710,000), as they felt that the fees charged were too high. In response, the plaintiff by letter dated 6 December 2005 stated that their fees were based on 'international norms'. But the plaintiff did not explain as to what they meant by 'international norms'. The plaintiff, however, reduced their bill by 25% (ie, by RM427,500) to RM1,346,625 (inclusive of 5% Government tax of RM64,125).

E

F [24] Clearly the plaintiff had based their fees on a percentage of the value of the subject-matter of the transaction and also on the so-called 'international norms'.

F

[25] In our judgment, since the Sixth Schedule of the Solicitors' Remuneration Order does not provide for the charging of fees on a percentage basis, and neither does the said Schedule make any reference to any 'international norms', therefore, whether or not the plaintiff's bill is in compliance with the Sixth Schedule of the Solicitors' Remuneration Order, or (as a consequence) whether or not the bill is a *bona fide* bill for the purpose of s. 124(2) of the LPA are triable issues.

H

I